

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 32523 of 2019
and
W.M.P. Nos. 32869 and 32870 of 2019**

K. Chelladurai

... Petitioner

-VS-

1. The State Information Commissioner,
No. 2, Thiyagaraya Salai,
Eldams Road Junction,
Royapet,
Chennai – 600 018.
2. The Public Information Officer/Zonal Deputy Tahsildar,
Tahsildar Office,
Mannargudi,
Thiruvarur District – 614 015.
3. K. Rajasekar

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in Case No. S.A. 2821/B/18 dated 14.10.2019 and quash the same as illegal and arbitrary.

For Petitioner : Mr. K. Jayaraman

For Respondents : Mr. Niranjana Rajagopalan,
Standing Counsel (for R1)

Mr. D. Sathyaraj,
Special Government Pleader (for R2)

Mr. A. Bobblie (for R3)

ORDER
(through video conference)

Heard Mr. K. Jayaraman, Learned Counsel for the Petitioner, Mr. Niranjana Rajagopalan, Learned Standing Counsel appearing for the First Respondent, Mr. D. Sathyaraj, Learned Special Government Pleader appearing for the Second Respondent and Mr. A. Bobblie, Learned Counsel appearing for the Third Respondent through video conference and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, viz., K. Rajasekar, appears to have made an application dated 27.02.2018 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act' for short), to the Second Respondent, viz., the Public Information Officer, regarding the removal of certain encroachments on public property. Since the Third Respondent was not satisfied

with the information furnished by the Second Respondent, he had filed an appeal dated 09.03.2018 under Section 19(1) of the RTI Act, to the Appellate Authority for which he had not received any reply. At that stage, the Third Respondent had filed Second Appeal dated 17.04.2018 before the First Respondent, viz., the State Information Commission under Section 19(3) of the RTI Act, which was taken on file as S.A. No. 2821/B/18. It was represented by the Second Respondent during the enquiry on 14.10.2019 before the First Respondent that the Third Respondent had been informed that the information sought by the Third Respondent had been furnished by letter dated 11.10.2019. The Third Respondent contended that the information furnished was false and that the Road has been blocked by anti-social elements which had not been removed till date and he had wanted correct information to be furnished. The Second Respondent then submitted that there was sufficient passage for an extent of 4 meters in the Northern and Southern side of the Pond to enter the land of the Third Respondent and the Third Respondent was advised to use the same considering the interest of general public. The First Respondent, who was of the view that the contentions of the Second Respondent could not be accepted, by order dated 14.10.2019 in S.A. No. 2821/B/18 directed the Second Respondent to remove all the encroachments on the Road and

communicate the action taken to the Third Respondent within a period of 30 days from the date of receipt of a copy of that order and report compliance before the First Respondent within a period of 45 days from the date of receipt of a copy of that order. The Petitioner, who was not a party to the proceedings before the First Respondent, has filed this Writ Petition challenging the aforesaid order dated 14.10.2019 passed by the First Respondent, complaining that it entails adverse civil consequence to him especially when he has filed a suit in O.S. No. 141 of 2019 before the District Munsif Court, Mannargudi for declaration of the right of usage of the Road along with certain others, which is still pending.

3. The main thrust of the contention of the Learned Counsel for the Petitioner is that the direction issued by the First Respondent in the impugned order undoubtedly entails adverse civil consequence to the Petitioner, but no notice or opportunity of personal hearing was afforded to the Petitioner before the impugned order was passed. It is further contended by him that the nature of relief granted by the First Respondent travels beyond the powers conferred upon the First Respondent by the RTI Act.

4. Learned Counsel appearing for the First and Third Respondents are not in a position to justify the impugned action viz-a-viz the aforesaid infirmities raised by the Learned Counsel for the Petitioner.

5. It is settled legal position that any decision entailing adverse civil consequence by a public authority must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken, as held by the Hon'ble Supreme Court of India in *State of Orissa -vs- Binapani Dei* [(AIR 1967 SC 1269)]. It is equally trite law that the First Respondent, viz., State Information Commission, which is an authority under the RTI Act, is entitled to exercise only those powers which have been conferred under Sections 18 and 19 of the RTI Act and cannot travel beyond same. The Hon'ble Supreme Court of India in *All India Indian Overseas Bank Sc and ST Employees' Welfare Association -vs- Union of India* [(1996) 6 SCC 606] has reiterated this legal position in connection with the scope of exercise of powers in respect of the National Commission for Scheduled

Castes and Scheduled Tribes established under Article 338 of the Constitution. Viewed from that perspective, there is substantial force in the contention of the Learned Counsel for the Petitioner that the First Respondent cannot grant any relief to the Third Respondent in the Second Appeal filed by him beyond the scope of the powers conferred on the First Respondent under the RTI Act.

6. In the aforesaid circumstances, the impugned order dated 14.10.2019 in S.A. No. 2821/B/18, which cannot be sustained, is set aside and the matter is remitted to the First Respondent to decide the matter afresh and pass reasoned orders on merits and in accordance with law, after impleading the Petitioner as a party to that proceeding and affording full opportunity of hearing to all parties concerned including the Petitioner and the Third Respondent following the prescribed procedure. It is needless to point out here that while adjudicating the Second Appeal filed by the Third Respondent, it is incumbent upon the First Respondent to consider each of the contentions raised by the parties including the question as to whether the nature of relief sought by the Third Respondent falls within the powers conferred upon the First Respondent under the RTI Act and communicate the decision taken to all parties concerned under written

acknowledgment. It is made clear that no view has been expressed by this Court on the factual correctness or entitlement of the rival claims of any of the contesting parties.

7. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Note: Issue order copy by 15.07.2020.

To

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P.D. AUDIKESAVALU, J.

vjt



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